

**EXHIBIT F TO THE DECLARATION OF  
ANNE B. SHAVER IN SUPPORT OF  
PLAINTIFFS' REPLY IN SUPPORT OF  
SUPPLEMENTAL MOTION FOR CLASS  
CERTIFICATION (ECF NO. 456)**

**REDACTED**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE ANTITRUST  
LITIGATION

THIS DOCUMENT RELATES TO: NO: Master Docket No.  
11-CV-2509-LHK

ALL ACTIONS.

CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF DANIEL ROBERT MCKELL  
March 20, 2013  
10:06 a.m.  
Hyatt Regency Hotel  
330 Tijeras, Northwest  
Albuquerque, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL  
PROCEDURE, this deposition was:

TAKEN BY: MR. SARAH R. SCHALMAN-BERGEN  
Attorney for Plaintiffs

REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69  
Bean & Associates, Inc.  
Professional Court Reporting Service  
201 Third Street, Northwest, Suite 1630  
Albuquerque, New Mexico 87102

(6941K) MAS

11:03 1 the HR business partner, were you the person that  
2 was at the other end of the open door?

3 A. I -- yes.

4 Q. What is Intel University?

11:04 5 A. It's our internal learning group, so that  
6 it conducts classes for managers and employees on  
7 anything from cultural things to technical training.

8 Q. Does the learning group conduct classes  
9 for managers with respect to compensation?

11:04 10 A. Yes.

11 Q. Did you have any job responsibilities as  
12 the HR -- as an HR business partner with respect to  
13 Intel University dealing with compensation?

14 MR. SHAH: Object to form.

11:04 15 A. As an HR business partner, I supported  
16 them -- I wouldn't have done work relative to  
17 manager training in that role.

18 Q. When you were an HR business partner, who  
19 did you report to?

11:05 20 A. I had several managers.

21 Q. What were their names?

22 A. Cecilia Lodico, Mike Fors. There's one  
23 more, but I'm forgetting.

24 Q. Hopefully you'll be able to spell those

11:05 25 for the court reporter. We can do it off the

11:05 1 record.

2 A. Lodico, last name is L-O-D-I-C-O. Fors is

3 F-O-R-S. Fors.

4 Q. When you were an HR business partner, did

11:05 5 you have any direct reports?

6 A. No.

7 Q. As an HR business partner, did you get

8 reviewed as part of the focal process?

9 A. Did I -- did my manager do a performance

11:06 10 review on me?

11 Q. Yes.

12 A. Yes.

13 Q. Are you familiar with the different types

14 of grades that Intel assigns to employees?

11:06 15 A. Yes.

16 Q. What -- and when I say grades, I'm

17 speaking of EE, O.

18 A. Rating?

19 Q. Rating.

11:06 20 A. Okay.

21 Q. What rating did you receive as the HR

22 business partner?

23 A. One time I was successful faster,

24 successful equal. I don't remember all of my

11:07 25 performance rating history.

11:07 1 Q. Can you list all of the different ratings  
2 that Intel uses?

3 MR. SHAH: Object to form.

4 A. Currently the ratings are outstanding,  
11:07 5 exceeds expectations, successful, below  
6 expectations, and improvement required. Those are  
7 the five current ratings. Those haven't always been  
8 the ratings.

9 Q. How have the ratings changed since you  
11:07 10 have joined Intel?

11 A. When I joined, they had three ratings:  
12 Outstanding, successful, and improvement required.  
13 And then they had three trends, so you would get a  
14 rating message and a trend message. The three trend  
11:07 15 labels were faster, equal, slower.

16 Q. What distinctions were meant by faster,  
17 equal, slower?

18 A. Your growth curve relative to peers doing  
19 the same job. So were you growing and improving at  
11:08 20 a faster rate, at the same rate, or at a slower rate  
21 than your peers.

22 Q. So within the O, S, and E --

23 A. IR.

24 Q. EIR?

11:08 25 A. Outstanding, successful, improvement

11:08 1 required. Sorry.

2 Q. Within O, S, and IR, you could also then  
3 have a secondary rating of F, E, or S?

4 A. Yes.

11:08 5 MR. SHAH: Object to form.

6 Q. Would everyone receive an F, E, or S in  
7 association with their O, S, and R -- and/or R  
8 rating, IR ratings?

9 MR. SHAH: Object to form.

11:09 10 A. Yes.

11 Q. When did Intel change from the three  
12 ratings with three trends to the five current  
13 ratings?

14 A. I don't recall the specific year.

11:09 15 2004-ish, somewhere around there.

16 Q. Did you have any involvement with respect  
17 to making that change?

18 A. In terms of making a recommendation, I  
19 don't think so. I may have been asked for my input.

11:09 20 Q. You were the HR business partner from  
21 approximately August 1999 to March 2003; is that  
22 fair?

23 MR. SHAH: Object to form.

24 A. Yeah, that sounds about right.

11:10 25 Q. Did your job duties change at all

11:10 1 throughout that time period?

2 A. From 1999 to 2003?

3 Q. Yes.

4 A. Not in material or significant ways. That

11:10 5 role was largely the same. And what I might be

6 doing in any particular month might be different,

7 but...

8 Q. Are you aware that Intel has job grades?

9 A. Yes.

11:11 10 Q. Is job grade the same as a grade level?

11 A. Yes.

12 Q. What are the job grade ranges that Intel

13 currently has?

14 MR. SHAH: Object to form.

11:11 15 A. Currently the job grades range from grade

16 2 up to 798.

17 Q. Are there 796 different job grades?

18 A. No.

19 Q. How many job grades are there?

11:11 20 A. I don't know the specific number.

21 Q. Can you give me an estimate?

22 A. Less than -- 100, say.

23 Q. Has the number of job grades changed since

24 you joined Intel?

11:12 25 A. Yes.

12:00 1 for those jobs.

2 Q. And is the purpose of the SMA budget to  
3 help retain and attract talent for the R&D jobs?

4 MR. SHAH: Object to form.

12:00 5 A. I'd say it's to pay the goals and to  
6 retain on the track side. Managers -- those hiring  
7 decisions are sort of individual negotiations  
8 between a candidate and a manager, so I think from  
9 our perspective, it's mostly about our employees  
12:00 10 that are at Intel.

11 Q. If an SMA budget is allocated to an R&D  
12 job, can the manager offer more compensation to a  
13 potential candidate?

14 MR. SHAH: Object to form.

12:01 15 A. It doesn't change what a manager can or  
16 can't do. A manager has discretion to bring  
17 employees in based on what they feel their value is.  
18 Whether that's at the same pay of people who are  
19 currently at Intel doing that job or deciding to pay

12:01 20 them more, I mean, that's a manager decision. To  
21 the extent that you're moving the pay for a  
22 population and the manager default is to bring  
23 people in at the same rate of what they're paying  
24 existing employees, then yes, over time, the more

12:02 25 you put in SMA, and that may translate to higher



12:02 1 offers in the future.

2 Q. From business consultant at grade 7, did  
3 you -- strike that. During your focal -- during the  
4 time period when you were a business consultant at  
12:02 5 grade ■, what was your rating?

6 A. ■  
7 ■ I don't recall which  
8 years and what ratings.

9 Q. During that time period, were you aware of  
12:02 10 what the ratings were for your peers?

11 A. No.

12 Q. Were you aware of what percentage of your  
13 peers also received ■?

14 A. Intel has rating distribution guidelines,  
12:03 15 expectations of what ratings would be, so  
16 successful, it's assumed that 60 to 70 percent -- so  
17 most employees -- are going to be rated successful.  
18 So if I had to guess what somebody was rated, I  
19 could guess successful and be right 60, 70 percent  
12:03 20 of the time.

21 Q. Have you ever spoken with your peers about  
22 what their ratings were?

23 A. No.

24 Q. Never?

12:03 25 A. No. I don't want to know. Better to not

12:03 1 know. It's personal. It's between them and their  
2 manager.

3 Q. Have you ever been made aware that  
4 employees speak to each other about what their  
12:03 5 ratings are?

6 MR. SHAH: Object to form.

7 A. Sure. That's an individual choice.  
8 There's nothing that prohibits it. It's just  
9 something I'm not personally interested in.

12:04 10 Q. How did you become aware that employees  
11 speak to each other about what their ratings are?

12 MR. SHAH: Object to form.

13 A. I don't know that I have witnessed it, but  
14 people talk, some people more than others. So I  
12:04 15 don't have anything else besides that.

16 Q. At a certain point, were you -- did you  
17 receive a promotion from business consultant in  
18 grade ■?

19 MR. SHAH: Object to form.

12:04 20 A. Yes, I was promoted to a grade ■.

21 Q. When was that?

22 A. End of 2006, I think.

23 Q. Prior to being promoted to grade ■, did  
24 you receive any increase in compensation or  
12:05 25 promotion within grade ■?

12:41 1 bonus programs.

2 Q. What are the names and job titles of those  
3 four other employees?

4 A. They're all considered compensation --  
12:41 5 comp and benefits specialists. Tanya Kako is one  
6 we've mentioned before. Terri DeGroat,  
7 D-E-G-R-O-A-T, is one. Carol Buck, B-U-C-K, is  
8 another. And Yamit Livenah is the fourth.  
9 L-I-V-E-N-E-H, if that helps.

12:42 10 Q. Do you still report to Ms. Gray?

11 A. Yes.

12 Q. Is this the first job position where you  
13 have had direct reports?

14 A. Yes.

12:42 15 Q. Is part of your job now to provide focal  
16 reviews to these direct reports?

17 A. Yes.

18 Q. Have you had an opportunity to do that  
19 since you have been in your new job as compensation  
12:42 20 manager?

21 A. Yes.

22 Q. When was that?

23 A. This month.

24 Q. What ratings did you give your four  
12:42 25 employees, four direct reports?

12:42 1 A. Our business group is running a pilot of  
2 no ratings, so they didn't get a rating.

3 Q. Did you have responsibility for allocating  
4 total compensation amongst your four direct reports?

12:43 5 A. Yes.

6 MR. SHAH: Object to form.

7 Q. Did you have a merit budget for your four  
8 reports?

9 A. Yes.

12:43 10 Q. Did you have a promotion budget for your  
11 four reports?

12 A. Yes.

13 Q. And did you have an SMA budget for your  
14 four reports?

12:43 15 A. No.

16 Q. Were there any other compensation pieces  
17 that you were responsible for allocating to the four  
18 reports?

19 A. Stock.

12:43 20 Q. How did you allocate the merit budget to  
21 your four reports?

22 A. There's a merit matrix in the tool. So  
23 even though we didn't give them a successful rating,  
24 it became the default rates for each of our  
12:44 25 employees, so 1 percent, basically.

12:44 1 Q. What do you mean by default rates?

2 A. The assumption in HR is that even though  
3 they're not being communicated that they have a  
4 rating, all employees would get a -- the raise  
12:44 5 associated with a successful rating, and then the  
6 manager could adjust the pay based on their  
7 performance up or down, so they could get more than  
8 [REDACTED] or get less than [REDACTED].

9 Q. And did you give all four of your reports  
12:44 10 the same [REDACTED]?

11 A. Two of them, yes. Two others, no.

12 Q. For those two, did you give them more or  
13 less than [REDACTED]?

14 A. More. One was promoted.

12:45 15 Q. When you say the [REDACTED], does that  
16 include the promotion budget, or is that limited to  
17 the merit budget?

18 A. The merit budget was [REDACTED]  
19 was the average raise for a successful in Q2 or Q3  
12:45 20 of the wide range. If they're in Q1, the tool would  
21 recommend [REDACTED] or something more. If they were  
22 in Q4, it would recommend [REDACTED].

23 Q. When you say "the tool," you spoke about  
24 the matrix tool.

12:46 25 A. The focal tool. Merit matrix is part of

12:46 1 the focal tool.

2 Q. Okay. Explain to me what the focal tool  
3 is.

4 A. It's an Internet-based tool that managers  
12:46 5 access to make pay decisions.

6 Q. How do they use the focal tool to make pay  
7 decisions?

8 A. A manager goes in and sees their  
9 employees, enters a rating, performance rating, or  
12:46 10 promotion, demotion, grade level changes, and based  
11 on the employee's rating and their position in the  
12 salary range, the merit -- the tool recommends a  
13 base pay raise associated with that. The manager  
14 then can change that amount up or down. Sometimes

12:47 15 they might completely disregard the tool and do 5  
16 percent when the tool recommends 1 percent. It's up  
17 to the manager. The tool gives them a -- they can  
18 see how much budget they have to spend, and then  
19 it's up to them whether they spend all that budget,  
12:47 20 spend more than that budget, spend less than that  
21 budget. It's kind of all over the place how they  
22 behave.

23 Q. The managers have discretion to spend more  
24 than they're budgeted?

12:47 25 A. They can overspend their budget.

12:47 1 Q. Where does that money come from?

2 A. For the most part, they'll spend to  
3 budget. Some will overspend because some groups  
4 underspend. Some will overspend and then the

12:47 5 decision at the executive level of each group --

6 they can roll up all the budgets and see, did they  
7 spend to budget, or not. Most of the time they're  
8 still underbudget. Sometimes it's overbudget, and  
9 it's up to the executive of that group to decide to

12:48 10 tell people to go back and spend less or to say,

11 "It's close enough, I'm okay to -- that we spent a  
12 little over our budget."

13 So it varies by group. We have some  
14 groups that will overspend and some that underspend.

12:48 15 Q. Does Intel monitor how often groups  
16 overspend their budget?

17 MR. SHAH: Object to form.

18 A. We have reports we look at each year, so  
19 each cycle, which groups, where they are spending  
12:48 20 relative to budget. But while most groups and most  
21 managers spend to budget, some over and under, so in  
22 aggregate, most of the time we're about at budget,  
23 but sometimes a little over, sometimes a little  
24 under.

12:49 25 Q. If a group continuously overspent on their

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN JOSE DIVISION

4 IN RE: HIGH-TECH EMPLOYEE ANTITRUST  
5 LITIGATION

6 THIS DOCUMENT RELATES TO:

7 ALL ACTIONS.

8  
9 NO: Master Docket No. 11-CV-2509-LHK

10 REPORTER'S CERTIFICATE

11 I, MARY ABERNATHY SEAL, New Mexico CCR  
12 #69, DO HEREBY CERTIFY that on March 20, 2013, the  
13 Deposition of DANIEL ROBERT McKELL was taken before  
me at the request of, and sealed original thereof  
retained by:

14 Attorney for the Plaintiffs  
15 Ms. Sarah R. Schalman-Bergen  
16 BERGER & MONTAGUE, P.C.  
17 1622 Locust Street  
Philadelphia, Pennsylvania 19103-6365  
(215) 875-3000

18 I FURTHER CERTIFY that copies of this  
19 Certificate have been mailed or delivered to all  
20 Counsel, and parties to the proceedings not  
represented by counsel, appearing at the taking of  
the Deposition.

21 I FURTHER CERTIFY that examination of this  
22 transcript and signature of the witness was required  
23 by the witness and all parties present.  
24 On \_\_\_\_\_ a letter was mailed or delivered to Mr.  
Sujal J. Shah regarding obtaining signature of the  
25 witness, and corrections, if any, were appended to  
the original and each copy of the Deposition.



1 I FURTHER CERTIFY that the recoverable  
2 cost of the original and one copy of the Deposition,  
3 including exhibits, to Mr. Sarah R. Schalman-Bergen  
4 is \$\_\_\_\_\_.

5 I FURTHER CERTIFY that I did administer  
6 the oath to the witness herein prior to the taking  
7 of this Deposition; that I did thereafter report in  
8 stenographic shorthand the questions and answers set  
9 forth herein, and the foregoing is a true and  
10 correct transcript of the proceeding had upon the  
11 taking of this Deposition to the best of my ability.

12 I FURTHER CERTIFY that I am neither  
13 employed by nor related to nor contracted with  
14 (unless excepted by the rules) any of the parties or  
15 attorneys in this case, and that I have no interest  
16 whatsoever in the final disposition of this case in  
17 any court.

18 \_\_\_\_\_  
19 Mary Abernathy Seal  
20 BEAN & ASSOCIATES, INC.  
21 NM Certified Court Reporter #69  
22 License Expires: 12/31/13

23 (6941K) MAS  
24 Date taken: March 20, 2013  
25 Proofread by: JB

1 IN RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to  
4 your deposition, indicate them below:

5 PAGE LINE

6 \_\_\_\_\_ Change to \_\_\_\_\_

7 \_\_\_\_\_ Change to \_\_\_\_\_

8 \_\_\_\_\_ Change to \_\_\_\_\_

9 \_\_\_\_\_ Change to \_\_\_\_\_

10 Any other changes to your deposition are  
11 to be listed below with a statement as to the reason  
for such change.

12 PAGE LINE CORRECTION REASON FOR CHANGE

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 I, DANIEL ROBERT McKELL, do hereby certify  
20 that I have read the foregoing pages of my testimony  
as transcribed and that the same is a true and  
21 correct transcript of the testimony given by me in  
this deposition on March 20, 2013, except for the  
changes made.

22

23 \_\_\_\_\_  
DANIEL ROBERT McKELL

24 (6941K) MAS Proofread by: JB

25